

AN ACT

RELATING TO WATER; PROVIDING FOR COMPLIANCE WITH AN ACEQUIA OR
COMMUNITY DITCH REQUIREMENT FOR A CHANGE IN POINT OF DIVERSION OR
PLACE OR PURPOSE OF USE OF A WATER RIGHT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 72, Article 5 NMSA 1978 is enacted to
read:

"ACEQUIAS AND COMMUNITY DITCHES--CHANGES IN POINT OF DIVERSION
OR PLACE OR PURPOSE OF USE.--

A. The state engineer shall not approve an application for a change,
including an emergency change, in point of diversion or place or purpose of use of a
water right into or out of an acequia or community ditch if the applicant has not
complied with the applicable requirement adopted by an acequia or community ditch
pursuant to Subsection E of Section 73-2-21 or Section 73-3-4.1 NMSA 1978.

B. The applicant for a change described in Subsection A of this section
shall submit with the application to the state engineer documentary evidence provided
by the commissioners of the acequia or community ditch of the applicant's compliance
with any applicable requirement for the change adopted by the acequia or community
ditch pursuant to Subsection E of Section 73-2-21 or Section 73-3-4.1 NMSA 1978.

C. If an acequia or community ditch has not adopted an applicable
requirement, the applicant shall submit to the state engineer along with the application
an affidavit provided by the commissioners of the acequia or community ditch stating
this fact.

D. If an acequia fails to make a decision within one hundred twenty days in response to an applicant's request for approval pursuant to a applicable requirement, the acequia or community ditch shall be deemed to have approved the applicant's request for approval and the state engineer shall proceed on the application as if the applicant had complied with any applicable acequia or community ditch requirement. The applicant's request shall be in writing and delivered by certified mail to the commissioners of the acequia or community ditch.

E. The provisions of this section do not apply to water rights or lands owned by or reserved for an Indian pueblo."

Section 2. Section 73-2-21 NMSA 1978 (being Laws 1895, Chapter 1, Section 4, as amended) is amended to read:

"73-2-21. COMMISSIONERS' POWERS AND DUTIES--MAYORDOMO'S DUTIES.--

A. The commissioners shall:

- (1) assess fatigue work or tasks of all parties owning water rights in such community ditches or acequias;
- (2) have power to contract and be contracted with;
- (3) make all necessary assessments to provide funds for the payment of the salary of the mayordomo and other legitimate expenses incident to the proper conduct and maintenance of the acequias under their charge;
- (4) make contracts for obtaining water for irrigation purposes in connection with their ditches, such contracts to be ratified by a vote of a majority of the owners of water rights in the ditches;
- (5) have general charge and control of all affairs pertaining to

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the same, together with the power to receive money in lieu of such fatigue or task work at a price to be fixed by them; and

(6) immediately upon taking office, provide bylaws, rules and regulations not in conflict with the laws of the state for the government of the ditch or acequia, a printed copy of which shall be furnished to each owner of a water right in such ditch.

B. The mayordomo or superintendent shall, under the direction of the commissioners, be the executive officer of the ditch and shall:

(1) have the superintendence of all work thereon, the distribution of the waters thereof and the collection of fines, if any, and of amounts to be paid in lieu of fatigue or task work;

(2) perform such other duties in connection with the ditch as may be prescribed by the rules and regulations of the same or as may be directed by the commissioners; and

(3) make full written reports of all money received, expended and how expended, and of all activities performed as such officer to the commissioners of the ditch, semiannually, on the first Monday in June and the last Monday in September; provided, further, that the mayordomo shall make such further reports as may be required by the ditch commissioners.

C. The treasurer of the ditch commissioners shall make reports to the ditch commissioners of the money received, expended and how expended, and kept in the custody of the treasurer, and of all activities performed as such officer as are herein required of the mayordomo.

D. The commissioners shall receive and pass upon the reports of the

mayordomo and the treasurer provided for in this section before their term of office expires. If the reports are found to be true and correct, they shall approve them; otherwise they shall reject them, respectively. All proceedings of the commissioners relating to all subjects whatsoever shall be reduced to writing in a book or books kept for that purpose, and all books and papers so kept by the commissioners and all reports made, filed or kept as herein required shall always be and remain public property, and shall be subject to the inspection of all persons therein concerned.

E. Pursuant to the rules or bylaws duly adopted by its members, an acequia or community ditch may require that a change in point of diversion or place or purpose of use of a water right served by the acequia or community ditch, or a change in a water right so that it is moved into and then served by the acequia or community ditch, shall be subject to approval by the commissioners of the acequia or community ditch. The change may be denied only if the commissioners determine that it would be detrimental to the acequia or community ditch or its members. The commissioners shall render a written decision explaining the reasons for the decision. If the person proposing the change or a member of the acequia or community ditch is aggrieved by the decision of the commissioners, he may appeal the decision in the district court of the county in which the acequia or community ditch is located within thirty days of the date of the decision. The court may set aside, reverse or remand the decision if it determines that the commissioners acted fraudulently, arbitrarily or capriciously, or that they did not act in accordance with law."

Section 3. A new Section 73-3-4.1 NMSA 1978 is enacted to read:

"73-3-4.1. COMMISSIONERS--ADDITIONAL DUTIES--APPROVAL OF CHANGES IN PLACE OR PURPOSE OF USE OF WATER--APPEALS.--Pursuant to

rules or bylaws duly adopted by its members, an acequia or community ditch may require that a change in the point of diversion or place or purpose of use of a water right served by the acequia or community ditch, or a change in a water right so that it is moved into and then served by the acequia or community ditch shall be subject to the approval by the commissioners. The change may be denied only if the commissioners determine that it would be detrimental to the acequia or community ditch or its members. The commissioners shall render a written decision explaining the reasons for the decision. If the person proposing the change or a member of the acequia or community ditch is aggrieved by the decision of the commissioners, he may appeal the decision in the district court of the county in which the acequia or community ditch is located within thirty days of the date of the decision. The court may set aside, reverse or remand the decision if it determines that the commissioners acted fraudulently, arbitrarily or capriciously or that they did not act in accordance with law."

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is March 1, 2008.